IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 171/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : September 26, 2006

Heard Mr. Paunikar, learned counsel for the appellants and Mr. V.M. Deshpande, learned counsel for the respondent.

By this appeal, the appellants take exception to the judgment and decree dated 10.1.2006 passed by First Adhoc District Judge, Achalpur in Regular Civil Appeal No.78/1992 allowing the appeal filed by the respondent-plaintiff against judgment and decree dated 26.8.1992 by Civil Judge, (Jr. Dn.) Dharni in Regular Civil Suit No.25/1989 filed by the respondent-plaintiff for possession.

In the suit filed by the respondent for possession of the suit property, the appellants-defendants denied title and also claimed right by way of adverse possession. The trial Court

recorded the findings against the plaintiff. The lower appellate Court upon appreciation of evidence led by the parties reversed the findings given by the trial Court. The lower appellate Court held that the evidence led by the plaintiff that the suit land was given to Batu, the predecessor-in-title of the appellants for cultivation and after his death to the defendant no.1 was not challenged in cross-examination of the plaintiff. Moreover, the case set up by the plaintiff was corroborated by documentary evidence as well as evidence of PW 2 Sakharam, PW 3 Sanu and PW 4 Munasen. This finding of lower appellate Court which is based on evidence led by the parties cannot be said to be perverse having regard to the totality of evidence led by the parties. Once it was not challenged by the defendants that field was given for cultivation to Batu and thereafter to defendant no.1, the evidence cannot challenge the title of the plaintiff to the suit field, in view of the admitted position that the plaintiff-respondent is the legal representatives of Zapu to whom the suit property belonged. In the

present case Section 116 of the Evidence Act is clearly attracted and therefore, although there was no partition in writing of the suit property between Zapu, Batu and Shikari, nonetheless the case set up by the plaintiff stands duly proved in the light of evidence led by the parties and more particularly, the plaintiff and his witnesses. That being the position I do not find that there is any perversity in the findings given by the lower appellate Court. In any event, there is no substantial question of law in the present appeal. Hence, the appeal is rejected.

C.A. No. 2152/06

In view of dismissal of the second appeal, the application for stay has become infructuous. Hence, the application is dismissed.

JUDGE

A.